

STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE #12-78:

BROCKTON EDUCATION ASSOCIATION,  
Affiliated with the MONTANA  
EDUCATION ASSOCIATION,

Complainant,

- vs -

FINAL ORDER

BOARD OF TRUSTEES, ROOSEVELT  
COUNTY SCHOOL DISTRICT NO. 55,  
and 55F,

Defendant.

\*\*\*\*\*

The Findings of Fact, Conclusions of Law and Recommended Order were issued by Hearing Examiner Jeff Andrews on September 24, 1979.

Attorney for Complainant, Emilie Loring, filed exceptions to the Hearing Examiner's Findings of Fact, Conclusions of Law and Recommended Order on November 31, 1979.

After reviewing the record and considering the briefs and oral arguments, the Board orders as follows:

1. IT IS ORDERED, that the exceptions of Complainant to the Hearing Examiner's Findings of Fact, Conclusions of Law and Recommended Order are hereby denied.

2. IT IS ORDERED, that this Board therefore adopt the Findings of Fact, Conclusions of Law and Recommended Order as the Final Order of this Board.

DATED this 11<sup>th</sup> day of December, 1979.

BOARD OF PERSONNEL APPEALS

By Brent Cronley  
Brent Cronley  
Chairman

CERTIFICATE OF MAILING

I, Jennifer Jacobson, do hereby certify and state that I mailed a true and correct copy of the above FINAL ORDER to the following persons on the 17<sup>th</sup> day of December, 1979:

Emilie Loring  
HILLEY & LORING, P.C.  
1711 Tenth Avenue South  
Great Falls, MT 59405

John Warner  
WEBER, BOSCH, RUHR, DUGDALE,  
WARNER & MARTIN  
4th Avenue at 4th Street  
Havre, Montana 59501

  
\_\_\_\_\_

STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE #12-78:  
BROCKTON EDUCATION ASSOCIATION,  
AFFILIATED WITH THE MONTANA  
EDUCATION ASSOCIATION,

COMPLAINANT

VS.

BOARD OF TRUSTEES, ROOSEVELT  
COUNTY SCHOOL DISTRICT #55 & 55F

DEPENDANT.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDED ORDER

\* \* \* \* \*

INTRODUCTION

On May 4, 1978, the Complainant filed an unfair labor practice charge with the Board of Personnel Appeals alleging that the Defendant violated Section 59-1605(1)(a) and (c), R.C.M. 1947.

Defendants answer was filed on May 16, 1978 and denies all the allegations.

A hearing on this matter was held on June 6, 1978, in Brockton, Montana. The Complainant was represented by Ms. Emilie Loring of the law firm of Hilley and Loring, P.C., Great Falls, Montana; the Defendant was represented by Mr. John Warner of the law firm of Weber, Bosch, Kuhr, Dugdale, Warner and Martin, Havre, Montana.

As the duly appointed hearing examiner of this Board, I conducted the hearing in accordance with the Montana Administrative Procedures Act (Sections 82-4201 to 82-4225, R.C.M. 1947).

After a thorough review of the record of the case, I make the following:

FINDINGS OF FACT

1. Mr. James Carlisle was a teacher employed by the Brockton School District during the 1976-77 and 1977-78 school years. In April of 1978, he was notified that his teaching contract would not be renewed for the 1978-79 school year.

1           2. Mr. Carlisle was an active member of the Brockton  
2 Education Association, having served as its president and chief  
3 negotiator.

4           3. Considerable testimony was taken as to ongoing problems  
5 between Carlisle and School Superintendent David Wilson:

- 6           a) In July of 1977, Wilson questioned Carlisle about why  
7 he would want to be involved in union activities.  
8           b) Wilson stated to Mr. Duane Braut, a teacher in Poplar,  
9 that the last two union presidents had not been renewed  
10 and that Carlisle would not be renewed.  
11           c) On September 23, 1977, Wilson asked for names of union  
12 members and criticized the union's method of choosing  
13 its negotiators.  
14           d) In his capacity as union president, Carlisle filed  
15 numerous grievances with Wilson. This angered Wilson  
16 and he considered Carlisle the instigator of the griev-  
17 ances.

18           4. Several evaluations were made of Carlisle's teaching  
19 performance.

- 20           a) The first, done by Elementary Principal Monteau, as  
21 well as two others by Superintendent Wilson, were  
22 negative. Mr. Carlisle disagreed with these evaluations  
23 but was not allowed adequate opportunity for rebuttal.  
24           b) A fourth evaluation was done by Nellie Fisher, a veteran  
25 teacher but not professionally qualified to make a  
26 formal evaluation. This evaluation was also negative.  
27 Mrs. Fisher further testified of problems with discipline  
28 and parental discontent with Mr. Carlisle.

29           5. School Board members testified that they made their  
30 decision in the matter of Mr. Carlisle on the basis of the evalu-  
31 ations, primarily that by Mrs. Fisher, and that they discounted  
32 the evaluations by Mr. Wilson because of the well known antagon-  
ism between Wilson and Carlisle.

1 6. Two other teachers, both members of the union negoti-  
2 ating team, who received favorable evaluations were renewed for  
3 the 1977-78 school year.

4 7. Mr. Gary Melbourne, a School Board member stated in  
5 response to the question "Did union activities play any part in  
6 Mr. Carlisle not being renewed?" that "I'd be lying if I said it  
7 didn't".

#### 8 DISCUSSION

9 A charge of union interference, i.e. the dismissal of an  
10 employee for union activities, presents a very difficult problem  
11 for the hearing examiner. On one hand, this Board is very reluc-  
12 tant to interfere in the rights of an elected body to hire and  
13 fire as it sees fit. On the other hand, the dismissal of a  
14 teacher for union activities can have severe ramifications for  
15 the teacher, for the union, and for public employee collective  
16 bargaining. The ramifications become even more severe if the  
17 dismissal was done under the guise of incompetence when in fact  
18 the dismissal was a result of union activities.

19 In ULP #12-78, we are faced with the interpretation and  
20 resolution of four concepts. They are:

21 1. An employer may discharge an employee for a good reason,  
22 for a poor reason, or for no reason at all, so long as no statu-  
23 tory provisions are violated (NLRB v. Condensor Corp., 128 F. 2d  
24 67, 73 LRRM 3002).

25 2. If the discharge was partially motivated by the employee's  
26 union activity, it is unlawful. (Billings Education Association  
27 v. School District #2 and Billings High School District, ULP  
28 #28-76).

29 3. If there is substantial evidence that the employee was  
30 illegally discharged, then the burden is on management to show  
31 that the reason for discharge was not union related (ULP #28-76).  
32

1 4. An unsatisfactory employee cannot place himself in a  
2 better position because of protected union activities. (Mt.  
3 Healthy City School District Board of Education v. Doyle, 429  
4 U.S. 274, 287 (1977)).

5 Substantial evidence has been presented that the non-renewal  
6 of Mr. Carlisle's teaching contract was at least partially moti-  
7 vated by his union activities. The most damaging evidence, of  
8 course, was the admission of School Board member Gary Melbourne  
9 to that effect. Further evidence shows the anti-union bias of  
10 Superintendent Wilson which was frequently directed toward Mr.  
11 Carlisle because of his position as union president. This is  
12 sufficient to shift the burden to management to prove its inno-  
13 cence.

14 The School Board made a very convincing case for its inno-  
15 cence. Mr. Carlisle was evaluated a total of four times: by  
16 Elementary Principal Monteau, twice by Superintendent Wilson, and  
17 by Mrs. Nellie Fisher. All four evaluations were negative.  
18 Testimony from the School Board was that their decisions as to  
19 who would or would not be offered contracts were made almost  
20 solely on the advice of Mrs. Fisher. The evaluations made by  
21 Superintendent Wilson were discounted by the School Board because  
22 of the well known conflict between Wilson and Carlisle. It was  
23 Mrs. Fisher's report to the School Board that Mr. Carlisle was  
24 not performing adequately either in teaching or in discipline.  
25 Although Mrs. Fisher was not professionally qualified to make  
26 these evaluations, the School Board seemed to place great confi-  
27 dence in her opinion. It is my opinion that the decision to not  
28 renew Mr. Carlisle's contract was made primarily on the recommen-  
29 dation of Mrs. Fisher and not because of Mr. Carlisle's union  
30 activity.

31 This decision has been difficult to make because I do not  
32 feel Mr. Carlisle has been treated fairly; unfortunately no

1 relief can be made by this Board. I do not think Mr. Carlisle  
2 was given a fair and professional evaluation either while he was  
3 teaching or at the time of his non-renewal. He was not given an  
4 opportunity to answer the complaints made about him. The School  
5 Board's decision, while not discriminatory, was certainly not  
6 made in a manner befitting his professional status and the effects  
7 such a decision may have.

8 CONCLUSIONS OF LAW

9 The allegation that the Board of Trustees, Roosevelt County  
10 School District No. 55 and 55F, has engaged in an unfair labor  
11 practice within the meaning of Sections 59-1605(1)(a) and (c),  
12 R.C.M. 1947, has not been sustained by the Brockton Education  
13 Association.

14 RECOMMENDED ORDER

15 The unfair labor practice charge filed by the Brockton  
16 Education Association against the Board of Trustees, Roosevelt  
17 County School District No. 55 and 55F, is hereby dismissed.

18 Dated this 24 day of September, 1979.

19  
20 BOARD OF PERSONNEL APPEALS

21 *Jeff Andrews*  
22 *By Robert R. Jensen*  
23 Jeff Andrews *Administrative*  
24 Hearing Examiner

25  
26 513:v  
27  
28  
29  
30  
31  
32